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ABSTRACT

The "related services" mandate is a controversial aspect of the Education for All Handicapped Children Act (EHCA). This chapter focuses on three parts of the issue, including: (1) A student's eligibility for services. This issue was emphasized in the 1984 Supreme Court "Irving Independent School District v. Tatro" decision. A child is not considered handicapped and in need of related services unless he or she needs special education. (2) The extent of services required. "Board of Education v. Rowley" in 1982 was the Supreme Court's first interpretation of the EHCA, implying that a "related service" is essential to achieve a "basic floor of opportunity" of education. (3) The different types of services required. Services include transportation, medical and health services, counseling and psychological services, recreation, and auxiliary aids and equipment. Transportation includes door-to-door service to special education programs and transportation to and from other services. Medical services are provided for diagnostic and evaluation purposes. Other health services are defined according to what school personnel can "reasonably be expected to provide." Recreational activities are included where they are necessary for the student to benefit from special education. The school district is not required to provide individually prescribed equipment for a student's personal use. (CJH)

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Special Education: Related Services Under 94-142

Julie Underwood O'Hara

Introduction

One of the more controversial and possibly most expensive aspects of the Education for All Handicapped Children Act (EHCA) is its related services mandate. Related services as defined by the Act are "such developmental, corrective, and other supportive services... as may be required to assist a handicapped child to benefit from special education."[1] Specifically these may include "transportation... speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training."[2]

Since the EHCA excludes only medical services from the related services mandate, virtually any service that would allow a handicapped student to benefit from the special education program could be considered a related service. Much of the litigation to date has been concerned with defining the precise parameters of the related services listed within the Act and with whether or not certain other services should be considered related services.

This piece will focus on three parts of the related services issue: (1) a student's eligibility for services; (2) the extent of services required; and (3) the different types of services required.

Eligibility

The Supreme Court in *Irving Independent School District v. Tatro*,[3] emphasized that the child must be "handicapped" under the Act (so as to require special education) before he or she can be eligible for related services. "In the absence of a handicap that requires special education, the need for what otherwise might qualify as a related service does not create an obligation under the Act."[4] Thus a student who may need some

1. 20 U.S.C. 1401 (17).
2. 34 C.F.R. 300.13 (1983).
3. 104 S. Ct. 3371 (1984).
4. *Id.* at 3379.

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counseling services but does not require other special educational services is not handicapped and does not qualify for related services. This is consistent with a comment to the federal regulations which states:

> The definition of "special education" is a particularly important one under these regulations, since a child is not handicapped unless he or she needs special education. (See the definition of "handicapped children" in section 300.5). The definition of "related services" (section 300.13) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services," and the child (because not handicapped) is not covered under the Act.[5]

This can be seen in a 1984 Illinois State Education Agency decision to uphold a district's decision to not provide services to a six-year-old boy who had been comatose since 1980. The agency determined that the boy was not in need of educational services because he remained totally unresponsive. Since he was not in need of special education the district was not responsible for his physical and occupational therapy needs.[6]

A different outcome was reached in *In re Lori B.*,[7] a 1983 Alaska State Education Agency decision. There the school district was contending that it should not be held responsible for a cerebral palsied child's occupational and physical therapy because she was not mentally impaired and was on an educational level with her peers. "The district, in formulating their position, has defined schooling in such a way as to limit the capacities at risk to intellect, cognition, and speech. These limits are too narrow for a normal child, much less one with a disability." The State Education Agency determined that the child was "handicapped" under the Act, as in need of special education because her impairment was severe enough to restrict significantly her ability to participate in regular schooling.

Extent

The Supreme Court's first decision interpreting the EHCA, *Board of Education v. Rowley*[8] did not specifically address the issue of "related services." It did review a district's responsibility and concluded that the Act was designed to maintain a "basic floor of opportunity" of education for the handicapped. This floor consists of "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child."[9] Thus, *Rowley* implies that whatever else a "related service" is, it does not come into existence unless its presence is essential to achieve a "basic floor of opportunity."

5. 34 C.F.R. 300.14 comment (1) (1983).
6. 506 E.H.L.R. 239 (S.E.A. Ill. 1984).
7. 506 E.H.L.R. 103 (Alaska State Educ. Dec. 1983).
8. 458 U.S. 176 (1982).
9. *Id.* at 201.

In *Tatro* the Supreme Court again emphasized this idea that only those services which are necessary to allow the child to benefit from the special education are required related services under the Act. "[O]nly those services necessary to aid a handicapped child to benefit from special education must be provided."[10] There it was determined that clean intermittent catheterization (CIC) was necessary for Amber Tatro, a child with spina bifida, to receive CIC during school hours in order to benefit from her special education.

> It is clear on this record that, without having CIC services available during the school day, Amber cannot attend school and thereby "benefit from special education." CIC services therefore fall squarely within the definition of a "supportive service."[11]

Types

Transportation

The definitions of "related services" in the statute and the regulations specifically include "transportation" as a related service. The Supreme Court in *Tatro* specifically noted that transportation was a related service which does "no more than enable a child to be physically present in class." The Court stated that the "services enable the child to reach, enter, or exit the school" are "related to the effort to educate."[12]

Transportation is probably the most common service provided by local education agencies to handicapped students. There are two situations in which a local education agency must provide transportation. First, if the district provides transportation for its general school population, it is responsible for providing handicapped students with transportation to any special education program in which it places them. Second, if it does not provide transportation to the general school population, it must decide on an individual basis whether a student needs transportation to benefit from special education.[13] As with all other related services transportation is to be provided free of charge. However, transportation fees normally charged to nonhandicapped students appear to be within ordinary meaning of "incidental fees" under Regulation 300.14(b)(1) and can be charged, unless the child is the only child in the family and requires specially designed transportation as a related service.[14]

Transportation may include door to door service, carrying the child from the door of the residence onto the vehicle if necessary.[15] However, the school district is not responsible for transporting the child past the

10. 104 S. Ct. at 3479.
11. *Id.* at 3377.
12. 104 S. Ct. at 3477.
13. *Dubois, as reported in* 211 E.H.L.R. 267 (1981).
14. *Stormer, as reported in* 211 E.H.L.R. 108 (1981).
15. Hurry v. Jones, 560 F. Supp. 500 (D.R.I. 1983), *aff'd, in part, rev'd, in part* (No. 83-1604, No. 83-1718 (1984)).

residence threshold. Thus a district was not required to assist a wheelchair bound student in getting up and down stairs inside his apartment building.[16]

Services may be required to transport a handicapped student to and from other services, e.g., to speech therapy sessions held at a public school,[17] or to and from therapy sessions at a hospital.[18] In addition, transportation may be required to and from residential placements, but only when necessary for the student to benefit from the education.[19] In *Cohen v. School Board of Dade County, Florida*,[20] the court determined that the district was only responsible for transportation to and from a residential placement for the student three times a year, other trips by the student and his parents were deemed to be for therapeutic purposes, rather than necessary for him to receive education in the residential placement and thus were not the district's financial responsibility.

Medical and Health Services

The regulations provide for the provision of medical services for diagnostic and evaluation purposes only. The Supreme Court in *Tatro* defined medical services as services not necessarily prescribed and eventually supervised by a physician, but those required to be provided by a physician. Thus, there the district was required to provide catheterization for a spina bifida child. Another example of this is in *Clermont Northeastern Schools* in which the Office of Civil Rights determined that because vision therapy needed by a student required the services of an optometrist rather than a vision therapist, it was a medical service and thus out of the parameters of required related services.[21] Whereas occupational and physical therapy are not transformed into a medical service merely because they have been prescribed by a physician.[22]

The regulations provide for the provision of other health services. They define "related services" for handicapped children to include "school health services,"[23] which are defined in turn as "services provided by a qualified school nurse or other qualified person."[24] Like medical services, these too are defined in terms of the provider's qualifications.

> In summary, whether the district has to provide a particular service to a particular child as a related service does not depend upon how specialized the service may be or even whether it is essential to sustain the child's life, but upon whether it is a service which the required

16. *Jones, as reported in* 254 E.H.L.R. 21 (OCR 1984).
17. *Cited to* 507 E.H.L.R. 125 (S.E.A. Cal. 1985).
18. Case No. 250, 502 E.H.L.R. 323 (S.E.A. Cal. 1981).
19. Case No. 6120, 502 E.H.L.R. 234 (S.E.A. Mass. 1982).
20. 450 So. 2d. 1248 (Fla. Dist. Ct. App. 1984).
21. *Clermont Northeastern Schools, as reported in* 257 E.H.L.R. 577 (OCR 1984).
22. Case No. 84-0848, 506 E.H.L.R. 340 (S.E.A. Mass. 1984).
23. 34 C.F.R. 300.13(a) (1983).
24. 34 C.F.R. 300.13(b) (1983); *Tatro*, 104 S. Ct. at 3377-8.

> service personnel described in the statute and its regulations can reasonably be expected to provide. If it is such a service it must be provided so as to facilitate the handicapped child's participation in the educational process in a manner consistent with the other requirements of the Education for All Handicapped Children Act.[25]

For example, a district in Hawaii was required to provide an aide to monitor a respirator and provide suctioning of mucus from a student's respiratory tract.[26] A district in Illinois was not required to employ a R.N. as an aide for a physically and mentally handicapped boy.[27] A district in New York was not required to provide an L.P.N. specially trained in respiratory therapy to accompany a student to school and to suction her lungs and throat, feed and give her medication through a jejunal tube, and monitor and record her input and output.[28]

Counseling and Psychological Services

As with any related service one must first determine if the counseling or psychological services are for educational purposes.[29] If they are determined to be necessary for the child to benefit from special education, psychotherapy and counseling services are related services required by the Act to be provided by the local education agency.[30]

A recent problem in this area is the question of whether psychotherapy, when provided by a licensed psychiatrist, remains a required counseling service, or if it then becomes an exempt medical service. The current trend seems to follow the opinion in *Max M. v Thompson*.[31] There the court determined that the professional degree and qualifications of the care provider did not in itself transform the nature of the services provided. Psychotherapy then was not considered a medical service. Further, the court found that the district could be financially liable for "no more than the cost of the service as provided by the minimum level health care personnel recognized as competent to perform the related service."[32]

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25. Case No. SE-27-84, 506 E.H.L.R. 103 (S.E.A. Ill. 1984).
26. State Dept. of Educ. of Hawaii v. Katherine, 727 F.2d 809 (9th Cir. 1984).
27. Case No. SE-27-84, 506 E.H.L.R. 103 (S.E.A. Ill. 1984).
28. Case No. 11403, 506 E.H.L.R. 378 (S.E.A. N.Y. 1984).
29. McKenzie v. Jefferson, 566 F. Supp. 404 (D.D.C. 1983); Darlene L. v Illinois Bd. of Educ., 568 F. Supp. 1340 (N.D. Ill. 1983); Case No. 84-1334, 506 E.H.L.R. 225 (S.E.A. N.J. 1984); 507 E.H.L.R. 121 (S.E.A. Cal. 1985).
30. Board of Educ. of Piscataway N.J. v. Prudential Ins. Co. of Am., 576 F. Supp. 420 (D.N.J. 1983); Papacoda v. Connecticut, 528 F. Supp. 68 (D. Conn. 1981); Gary B. v. Cronin, 542 F. Supp. 102 (N.D. Ill. 1980); *In re* A Family, 602 P.2d 157 (1979).
31. 592 F. Supp. 1437 (N.D. Ill. 1984).
32. *Id.* at 144.

Recreation

Recreational activities are a possible related service where they are necessary for the student to benefit from special education. In a Wisconsin ruling, the state education agency determined that a scouting program could be a required related service, but in the situation at hand it was not since the child's "socialization needs could be and were being met by the district. Therefore, the district [was] not... required to provide scouting as a related service."[33] In *Kathleen G. and David G.*, a Massachusetts ruling,[34] the students were seeking transportation to and from extended day sports programs at school for the deaf which they attended. The state education agency found that one of the student's educational needs included an extended day program for extracurricular activities. The student for whom this was required had a profound hearing loss and related emotional problems. The state education agency determined that she had

> special education needs addressing her social-emotional development, that informal social situation combined with counseling is the vehicle for addressing such needs, that such informal social situation is not provided during the day's structured academic setting and is not available in her community.[35]

Auxiliary Aids and Equipment

In *In re Mary*[36] the district was required to make available to the student on a twenty-four hour basis an Apple IIe package, communication and academic software, adaptive firmware card, votraz speech synthesizer and silent reviewer. It was determined that with the equipment Mary would be able to make gains in communication she was previously unable to achieve. However, in *Tatro* the Supreme Court made specific mention of the fact that the district was not required to provide the equipment necessary to catheterize the student.[37] The difference may be the individualized nature of the equipment. A district is not required to provide individually prescribed equipment for a student's personal use whether or not it is necessary for the student's education. The most obvious example of this is the district's absence of responsibility to provide eyeglasses for students.[38]

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33. Case No. 55, 506 E.H.L.R. 387, 395 (S.E.A. Wis. 1984).
34. Cases No. 84-0347, No. 84-0345, 506 E.H.L.R. 317 (S.E.A. Mass. 1984).
35. *Id.* at 319.
36. Case No. 84-0720, 506 E.H.L.R. 325 (S.E.A. Mass. 1984).
37. *Tatro*, 104 S. Ct. at 3379.
38. Bureau of Education for the Handicapped (B.E.H.) Policy Letter.